

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

INTERNATIONAL FIRE AND SAFETY, INC

PLAINTIFF

v.

No. 2:06cv63KS-MTP

HC SERVICES, INC. ET AL.

DEFENDANTS

**ORDER DENYING MOTION TO STRIKE AMENDED COMPLAINT AND GRANTING
CROSS MOTION TO AMEND**

THIS MATTER is before the court on the defendants' motion to strike amended complaint [55] and plaintiff's cross motion to amend [66], and the court having considered the motions and the submissions of the parties finds that the motion to strike should be DENIED and the cross-motion to amend should be GRANTED.

Plaintiff's amended complaint was filed within the deadline set by the scheduling order although leave of court was not sought as required. The court finds plaintiff's reason for not seeking leave of court, i.e, that plaintiff did not know that an answer was filed, to be unconvincing and insufficient especially considering the level of attention plaintiff has devoted to every other aspect of this case. Nevertheless, the plaintiff's reason for failing to seek leave to amend or to allow modification of the scheduling order to accommodate the amended pleading is but one factor for the court to consider. *S & W Enterprises, LLC v. Southtrust Bank of Alabama*, 315 F.3d 533, 535 (5th Cir. 2003). Others factors include the importance of the amendment, the potential for prejudice and the availability of a continuance or other measures to cure any prejudice. *Id* at 535.

There is no real prejudice to the defendants here and any additional discovery needed to address the new claims can be more efficiently conducted in this matter rather than in a separate matter. Moreover, Rule 15 of the Federal Rules of Civil Procedure favors a liberal amendment policy. Accordingly, the court finds that the amendment should be allowed and the amended complaint [45] will be deemed timely filed. In so ruling, the court in no way addresses the merits of the claims asserted or attempted to be asserted in the amended complaint.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Motion to Strike Amended Complaint is DENIED and the Cross Motion to Amend is GRANTED. Defendants shall respond to the amended pleading on or before November 15, 2006.

SO ORDERED this 31st day of October, 2006.

s/ Michael T. Parker

United States Magistrate Judge